

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

STACEY HANEY, individually and as Parent and Natural Guardian of HARLEY HANEY, a minor, and PAIGE HANEY, a minor, and BETH VOYLES and JOHN VOYLES, husband and wife, ASHLEY VOYLES, individually, LOREN KISKADDEN, individually, GRACE KISKADDEN, individually,	:	Consolidated at Docket No. 2012-3534
	:	The Honorable Michael J. Lucas
	:	<b>OMNIBUS MOTION TO QUASH SUBPOENAS, FOR PROTECTIVE ORDER AND AWARD OF COUNSEL FEES</b>
Plaintiffs,	:	Filed on behalf of Intervenor:
vs.	:	The Pittsburgh Post-Gazette
RANGE RESOURCES -APPALACHIA, LLC, et al.,	:	
Defendants.	:	Counsel of Record for This Party:
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STACEY HANEY, individually and as Parent and Natural Guardian of HARLEY HANEY, a minor, and PAIGE HANEY, a minor, and BETH VOYLES and JOHN VOYLES, husband and wife, ASHLEY VOYLES, individually, LOREN KISKADDEN, individually, GRACE KISKADDEN, individually,	:	FREDERICK N. FRANK, Esquire Pa. I.D. #10395
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Plaintiffs,	:	(412) 471-5912
vs.	:	
SOLMAX INTERNATIONAL, INC.,	:	
Defendant.	:	

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

STACEY HANEY, et al.,	:	CIVIL DIVISION
Plaintiffs,	:	
vs.	:	Case No. 2012-3534
RANGE RESOURCES – APPALACHIA	:	
LLC, et al.,	:	
Defendants.	:	
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STACEY HANEY, et al.,	:	
Plaintiffs,	:	
vs.	:	
SOLMAX INTERNATIONAL, INC.,	:	
Defendant.	:	

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KINDLY TAKE NOTICE that the Omnibus Motion to Quash Subpoenas, for Protective Order and Award of Counsel Fees will be presented to The Honorable Michael J. Lucas on the **8<sup>th</sup> day of March, 2019 at 8:45 a.m.** in Courtroom No. 5, Washington County Courthouse, 1 South Main Street, Washington, PA 15301.



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Frederick N. Frank  
Attorney for Intervenor

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**OMNIBUS MOTION TO QUASH SUBPOENAS, FOR PROTECTIVE ORDER AND  
AWARD OF COUNSEL FEES**

I. INTRODUCTION

1. The instant matter is before this Court on The Pittsburgh Post-Gazette's ("The Post-Gazette") Emergency Petition to Intervene and to Unseal Record ("Motion to Unseal"), which asserts the public's right of access to sealed judicial documents, including a motion to enforce a settlement agreement and an order with respect to the motion to enforce. A copy of the Motion to Unseal is attached as Exhibit 1.

2. On February 7, 2019, Range Resources filed its Response in Opposition to the Motion to Unseal (the "Opposition Response").

3. On February 7, 2019, this Court issued an Order of Court scheduling a hearing on the Motion to Unseal requiring all parties seeking to maintain closure of the records to serve an

answer to the Motion to Unseal ten days before the hearing. The hearing is scheduled for March 25, 2019 at 9:00 a.m.

4. After the close of business hours on February 25, 2019, Range Resources emailed counsel for The Post-Gazette the following:

- a. Subpoena to Attend and Testify and Notice of Deposition *Duces Tecum* of PG Publishing Co. D/B/A The Pittsburgh Post-Gazette (“The PG Subpoena”);
- b. Subpoena to Attend and Testify and Notice of Deposition *Duces Tecum* of Sally Stapleton (Managing Editor for The Post-Gazette) (the “Stapleton Subpoena”);
- c. Subpoena to Attend and Testify and Notice of Deposition *Duces Tecum* of David Templeton (Reporter for The Post-Gazette) (the “Templeton Subpoena”); and
- d. Subpoena to Attend and Testify and Notice of Deposition *Duces Tecum* of Don Hopey (Reporter for The Post-Gazette) (the “Hopey Subpoena”).

(collectively referred to as the “Subpoenas”).

5. The Stapleton Subpoena, Hopey Subpoena and Templeton Subpoena notice the named individuals for depositions on March 12, 2019 and direct that the documents identified in Exhibit A be produced at the depositions. The PG Subpoena is directed to a corporate designee of The Post-Gazette and contains a similar request for documents for the designee to produce at the deposition. Included in the PG Subpoena as Exhibit B is a list of topics for the deposition. As the documents requested in each subpoena are identical, only the PG Subpoena is attached as Exhibit 2.

6. The Subpoenas seek testimony and documents that have absolutely nothing to do with the legal and factual issues in the Motion to Unseal. No fact that could be learned as a result of this discovery has any logical bearing on the disposition of the Motion to Unseal. This discovery, made in a bad faith effort to harass and intimidate the free press, ignores that the discovery of testimony from reporters, including their sources and notes, is manifestly impermissible because it would violate two sacrosanct protections of the free press:

- a. The discovery would violate the absolute privilege of the Pennsylvania Shield Law protecting reporters from being compelled to disclose their sources; and
- b. This discovery would violate the Qualified First Amendment Privilege, which protects reporters from being compelled to testify regarding their reporting and to produce their notes.

7. Accordingly, the Subpoenas must be quashed and an award of counsel fees to The Post-Gazette is warranted for Range Resources' obdurate and vexatious conduct in issuing the Subpoenas.

## II. ARGUMENT

### A. The Subpoenas Must Be Quashed Because They Seek Testimony and Documents Protected by the Pennsylvania Shield Law

8. The Pennsylvania Shield Law, 42 Pa. C.S. § 5942, entitled "Confidential communications to news reporters" (the "Shield Law"), states that:

(a) **General rule.**--No person engaged on, connected with, or employed by any newspaper of general circulation or any press association or any radio or television station, or any magazine of general circulation, for the purpose of gathering, procuring, compiling, editing or publishing news, shall be required to disclose the source of any information procured or obtained by such person, in any legal proceeding, trial or investigation before any government unit.

(b) **Exception.**--The provisions of subsection (a) insofar as they relate to radio or television stations shall not apply unless the radio or television station maintains and keeps open for inspection, for a period of at least one year from the date of the actual broadcast or telecast, an exact recording, transcription, kinescopic film or certified written transcript of the actual broadcast or telecast.

9. Since its enactment in 1937, the Pennsylvania Supreme Court has repeatedly and unequivocally held that the Shield Law affords journalists absolute protection from the compelled disclosure of information that could reveal the identity of a confidential source. *See Castellani v.*

*Scranton Times, L.P.*, 956 A.2d 937, 951 (Pa. 2008) (setting forth Pennsylvania Supreme Court precedent interpreting the Shield Law in prohibiting the compelled disclosure of a confidential source's identity).

10. The Pennsylvania Supreme Court is clear that the Shield Law encompasses not just testimony, but also documents or reporting materials that could potentially reveal a confidential source's identity. *See Castellani*, 956 A.2d at 950 (citing Pennsylvania Supreme Court precedent "as standing for the proposition that documents may be considered sources for Shield Law purposes, where production of such documents, even if redacted, could breach the confidentiality of the identity of a human source and thereby threaten the free flow of information from confidential informants to the media.").

11. The scope of the privilege is broad and protects unpublished materials even where the source of the information is known as held in the seminal case interpreting the Shield Law, *In re Taylor*, 193 A. 2d 181 (Pa. 1963).

12. In *Taylor*, a subpoena was directed to reporters to appear before a grand jury and bring with them tapes and documents gathered during the course of the newspaper's investigation of a city official. The paper had published an article on its interview with the identified city official. *Id.* at 182.

13. The trial court directed the reporters to produce all the documents and interview tapes evidencing what the city official had told them with the names of others deleted. The Pennsylvania Supreme Court reversed the trial court, holding that the tapes and documents, even in redacted form, did not need to be produced "because the identity of many other persons may have been revealed in the questions and answers." *Id.* at 186. The Court noted:

"If a Court can select or direct newsman in its or their judgment to selector delete what information is disclosed by the informer...the object and intent of [the Shield Law] will be *realistically nullified*".

*Id.* at 186 (emphasis in the original).

14. The Pennsylvania Supreme Court has expressed that the Shield Law's absolute guarantee of source confidentiality is vital to the free-flow of information and journalistic endeavors:

It is a matter of widespread common and therefore of Judicial knowledge that newspapers and news media are the principal source of news concerning daily local, State, National and international events. We would be unrealistic if we did not take judicial notice of another matter of wide public knowledge and great importance, namely, that important information, tips and leads will dry up and the public will often be deprived of the knowledge of dereliction of public duty, bribery, corruption, conspiracy and other crimes committed or possibly committed by public officials or by powerful individuals or organizations, unless newsmen are able to *fully and completely* protect the sources of their information.

*Taylor*, 193 A.2d at 185 (emphasis in original).

15. Although indicated that their purpose "is to inquire into all the facts and circumstances involved in the Pittsburgh Post-Gazette's Emergency Petition to Intervene and To Unseal", the Subpoenas are nothing more than a poorly disguised attempt to obtain protected source material and harass and intimidate the free press. Accordingly, the Subpoenas must be quashed as they seek testimony and documents that are absolutely privileged under the Shield Law.

16. The Stapleton Subpoena, Hopey Subpoena, Templeton Subpoena and PG Subpoena contain an identical list of documents that the deponent must produce at the deposition (the "Request"). *See Exhibit A to Exhibit 2.* The PG Subpoena, in addition to list of documents, provides a list a of topics for the designee, which merely incorporate the documents requested in Exhibit B. *See Exhibit B to Exhibit 2.*

17. The documents requested not only implicate, but directly target, protected source material in the possession of The Post-Gazette and its employees regarding the litigation referenced by Range Resources in its Subpoena, which even if existent, would have been obtained solely for the purpose of gathering news. Thus, any testimony or document that related to the litigation cited by

Range Resources that has the potential to reveal source information is protected by the Shield Law. This is especially true given that Range Resources defines ‘Documents’ as including reporters notes. The Requests are as follows:

- a. Request No. 1 seeks all documents reflecting *communications* with any plaintiff or their agent or representative regarding various judicial and agency actions. It is obvious that any communications with the plaintiffs or their agents would identify or could lead to the identification of source material for The Post-Gazette’s coverage.
- b. Request No. 2 asks to produce documents showing the source of a statement in an article published by The Post-Gazette that a civil complaint was filed in the underlying litigation. Once again, Range Resources is specifically targeting documentation identifying the source of information appearing in an article.
- c. Request No. 3 similarly asks for documentation related to The Post-Gazette’s knowledge that various pleadings were filed under seal in the underlying matter. Preliminarily, Request No. 3 appears to be seeking a copy of the publicly available docket in this matter, as it would clearly show the referenced pleadings as filed under seal. If Range Resources, however, is insinuating that another source provided the information. Any documentation related thereto is strictly protected by the Shield Law.
- d. Request No. 4 asks that The Post-Gazette produce documents related to its statement in its Motion to Unseal that it learned of a hearing before the Court on February 7, 2019 at 8:45 a.m. As explained with respect to Request No. 3, asking The Post-Gazette to provide documents showing the source of information is strictly prohibited by the Shield Law.
- e. Request No. 5 is a request for documents showing how The Post-Gazette was made aware of recent developments in the underlying matter. Documents showing the source of how The Post-Gazette became aware of the underlying matter is protected by the Shield Law.
- f. Request No. 6 asks for documents supporting the allegation in paragraph 33 of the Motion to Unseal that “Range Resources has no governmental interest.” Range Resources’ request is disingenuous. The quoted language from the Motion to Seal in Request No. 6 is not a statement of fact but rather a legal assertion that Range Resources is incapable of overcoming its burden under the First Amendment to show that an important governmental interest is served by sealing the records at issue. The document relating to

this statement is the legal argument appearing in the Motion to Unseal. Accordingly, Request No. 6 is improper. Nonetheless, documents relating to the statement would obviously disclose the source of the information, which is prohibited by the Shield Law<sup>1</sup>.

- g. Request No. 7 seeks letters specifically referenced in an article appearing in The Post-Gazette on January 28, 2019. The letters are specifically identified as having been provided to The Post-Gazette from unnamed sources. Providing the requested letters and related documents would reveal these sources. The Shield Law strictly prohibits such disclosures.
- h. Request Nos. 8 through 10 seek communications and documents relating to various matters referenced in the January 28, 2019 article. Requests Nos. 8 and 10 ask for communications between various individuals “that are the subject of” the January 28, 2019 article. Any communications referenced in the January 28, 2019 article could not be disclosed without directly or indirectly revealing the source of the communications. Accordingly, Requests Nos. 8 and 10 are barred by the Shield Law. Request No. 9 asks for documents related to an “arrangement” referenced in the January 28, 2019 article. The source of The Post-Gazette’s information regarding the “arrangement” is protected under the Shield Law as well any related documents where the source of the information could be indirectly revealed.
- i. Request Nos. 11 and 12 request documents related to a meeting in May of 2017 that is referenced in the January 28, 2019 article. Documents revealing the source of information appearing in the January 28, 2019 article, i.e. the source of information regarding the May 2017 meeting, are protected by the Shield Law.
- j. Request No. 13 asks for communications between The Post-Gazette and June Chappel as to matters appearing in the January 28, 2019 article. Communications involving June Chappel and The Post-Gazette, if existent and relate to the January 28, 2019 article, could potentially reveal that Ms. Chappel is the source of information appearing in the January 28, 2019 article, which is prohibited by the Shield Law.

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<sup>1</sup> To the extent that Range Resources is seeking documentation that supports the legal conclusion that “Range Resources has no governmental interest”, any such documentation would be protected by the attorney-client privilege and attorney-work product doctrine. *See Sedat, Inc. v. Dep’t of Envtl. Res.*, 641 A.2d 1243, 1245 (Pa. Commw. Ct. 1994) (providing that the work product doctrine’s “protection of attorney’s mental impressions is unqualified” and “legal advice given by an attorney in his professional capacity in response to a client inquiry is immune from discovery on the basis of the attorney-client privilege”).

- k. Requests No. 14 seeks communications between The Post-Gazette and three other individuals anonymously referenced in the January 28, 2019 article. Disclosing such communications, assuming they even exist, obviously would disclose the source and identify of the individuals referenced in the January 28, 2019 article. The protections afforded by the Shield Law against Request No. 14 could not be clearer.
- l. Request No. 15 asks for documents related to a statement appearing in the January 28, 2019 article that a letter was introduced as an exhibit during a hearing in the underling litigation in August 2018. The requested documents would identify indirectly or directly the source of the information appearing in the January 28, 2019 article. The Shield Law prohibits such a disclosure.
- m. Request No. 16 specifically asks for reporter notes regarding efforts by Stacey Haney, GOLDBERG, KAMIN & GARVIN, and/or SMITH BUTZ” to unseal or disclose records in the underlying litigation. The reporters notes requested in Request No. 16 are unequivocally protected by the Shield Law as they contain source information regarding The Post-Gazette’s coverage of the underlying litigation.

18. As set forth above, each of the requests sought by the Subpoenas is strictly barred by the Shield Law. Further, because the Stapleton Subpoena, Hopey Subpoena and Templeton Subpoena seek testimony regarding the documents addressed above, which again are absolutely protected from disclosure, any such testimony also is barred by the Shield Law.

19. The PG Subpoena, in addition to list of documents, provides a list of topics for the designee, a majority of which merely incorporate the documents requested in Exhibit A. The topics listed in Exhibit B to the PG Subpoena (the “Topics”) are absolutely protected by the Shield Law.

- a. Topic No. 1 simply lists the factual basis of the information and allegations contained in the Motion to Unseal. Testimony as to this information would directly or indirectly reveal the source of the information and allegations. Accordingly, the Shield Law bars this testimony.
- b. Topic No. 2 references The Post-Gazette’s knowledge of the facts reported in the January 28, 2019 article. Once again, such testimony would disclose, directly or indirectly, the source of the facts reported in the January 28, 2019 article. This is strictly prohibited by the Shield Law.

- c. Topic No. 3 is a reiteration of communications listed in Exhibit A in Requests Nos. 8, 9, 10, 11, 12, 13, 14 and 15 and additional correspondence referenced in the January 28, 2019 article. Any communications referenced in the January 28, 2019 article could not be disclosed without directly or indirectly revealing the source of the communications. Additionally, communications involving named individuals and The Post-Gazette, which relate to the January 28, 2019 article, could potentially reveal the names of individuals who are the source of information appearing in the article.
- d. Topic No. 4 lists the manner of The Post-Gazette's receipt of the documents listed in Topic No. 3. Testimony as to how The Post-Gazette's received various documents is a direct infringement on the Shield Law as it would disclose the source of the documents.
- e. Topic No. 5 indicates that the testimony will pertain to how The Post-Gazette obtained knowledge of the facts contained in the documents and communications listed in Topic No. 3. This topic is squarely aimed at The Post-Gazette's sources material and accordingly, is expressly prohibited by the Shield Law.
- f. Topic No. 6 merely reiterates Request No. 1 in Exhibit A to the Subpoenas. Again, it is obvious that any communications with the plaintiffs or their agents would identify or could lead to the identification of source material for The Post-Gazette's coverage.

20. The documents and testimony sought by the Subpoenas, because they would directly or indirectly lead to the disclosure of source material, are expressly prohibited by the Shield Law. The Pennsylvania Supreme Court is clear that even if the potential for disclosure of sources is not discernable *prima facie*, the Shield Law's absolute guarantee of source confidentiality must be liberally extended to protect sacrosanct rights that are critical to our democracy and the press' ability to function. *See Taylor*, 193 A.2d at 185 (stating that the Shield Law "must be liberally construed in favor of the newspapers and news media").

**B. Range Resources Cannot Overcome the Qualified Reporter's Privilege**

21. In addition to the absolute privilege afforded by the Shield Law, Range Resource faces an additional, but no less insurmountable, obstacle – the First Amendment Qualified Reporter's Privilege.

22. In order to protect the “essential role played by the press in the dissemination of information and matters of interest and concern to the public” guaranteed by the First Amendment to the United States Constitution, Federal and the Pennsylvania Courts have uniformly applied a qualified reporter’s privilege (the “Qualified Privilege”). *See Riley v. City of Chester*, 612 F.2d 708, 714 (3d Cir. 1979)<sup>2</sup>. *See also McMenamin v. Tartaglione*, 590 A.2d 802, 811 (Pa. Commw. Ct. 1991), *aff’d*, 590 A.2d 753 (1991) *citing Riley, supra*.

23. The Qualified Privilege affords broad protections to reporters that are subpoenaed for notes, documents or testimony. *See United States v. Cuthbertson*, 651 F.2d 189 (3d Cir. 1981) (“*Cuthbertson IP*”) (applying the Qualified Privilege to a subpoena *duces tecum* issued to the Columbia Broadcasting System, Inc., which sought “all reporters’ notes, file ‘out takes,’ audiotapes, and transcripts of interviews prepared in connection with the ‘60 Minutes’ program”); and *Altomose Const. Co. v. Bldg. & Const. Trades Council of Philadelphia & Vicinity*, 443 F. Supp. 489 (E.D. Pa. 1977), (granting a motion to quash on the basis that the Qualified Privilege barred testimony by a news manager and the production of documents pursuant to a subpoena *duces tecum*).

24. The Qualified Privilege will be overcome only where a “demonstrated, specific need for evidence” presents a paramount interest to which the privilege must yield. *Riley*, 612 F.2d at 716. The determination of whether the Qualified Privilege has been overcome must be made on a “case-by-case basis,” balancing the rights of reporters under the First Amendment against the interests of those seeking the information the reporters possess. *Id.* at 716. In accordance with the forgoing

considerations, in order to overcome the Qualified Privilege, Courts have held that the requestor must show that:

- (1) he or she must demonstrate an effort to obtain the information from other sources; (2) he or she must demonstrate that the only access to the information sought is through the journalist and his or her sources; and (3) he or she must persuade the Court that the information sought is *crucial to the claim*.

*Perry v. Kehlman*, 1997 WL 117027, at \*1 (E.D. Pa. Mar. 11, 1997) citing *Cuthbertson II*, *supra*<sup>3</sup>. (emphasis added).

**1. The Testimony and Documentation Sought by the Subpoenas Is Not Crucial to Range Resources' Response to the Motion to Unseal**

25. The testimony and documentation sought by the Subpoenas is wholly unrelated, much less crucial, to the Motion to Unseal. The law that applies to the Motion to Unseal has nothing whatsoever to do with subjects identified in the subpoenas, delving into the reporter's sources and methods.

26. The Motion to Unseal sets forth a claim for public access to two motions and orders filed under seal in the underlying litigation. The Motion to Unseal is clear that the only way public access to judicial documents can be defeated is to overcome the presumptions of access under the Pennsylvania Constitution, the common law and First Amendment right of access:

20. The Superior Court has stated that there are two methods for analyzing requests for closure of judicial proceedings, each of which begins with a presumption of openness – a common law analysis and a constitutional analysis. *Zdrok v. Zdrok*, 829 A.2d 697, 699 (Pa. Super. 2003).

21. Under the common law approach, the party seeking closure must show that his or her interest in secrecy outweighs the presumption of openness. *Id.*

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<sup>3</sup> It should be noted that the test cited by *Perry* and *Cuthbertson II* is commonly referred to as the *Riley* Test, which is derived from the seminal decision of the Third Circuit in *Riley*, *supra*, 612 F.2d 708.

22. Under the constitutional approach, which is based on the First Amendment of the United States Constitution and Article I, Section 11 of the Pennsylvania Constitution, the party seeking closure must overcome the presumption of openness by showing that closure serves an important governmental interest and there is no less restrictive way to serve that interest. *Id.*
22. In cases where a party is seeking closure and cannot meet the threshold of the common law analysis, it is not necessary for the Court to consider whether the constitutional analysis has been satisfied. *Hallowich v. Range Res. Corp.*, No. 2010-3954, 2013 WL 10254260, at \*3 (Pa. Com. Pl. Mar. 20, 2013).

Motion to Unseal, ¶¶ 20-23.

27. Thus, Range Resources must demonstrate that its interest in secrecy outweighs the common law presumption of openness. If the common law presumption is overcome, Range Resources must show that closure serves an important governmental interest and there is no less restrictive way to serve that interest.

28. There is nothing in the Subpoenas that seeks testimony or documentation regarding Range Resources' secrecy rights or important governmental interests. It is incomprehensible how the Subpoenas, which range in scope from protected source material involving a legally irrelevant article appearing in The Post-Gazette to demanding a review of pleadings involving The Post-Gazette from 1950 to present, are *crucial* to the extremely limited determinations presented by the Motion to Unseal.

29. Because the Subpoenas seek information that has no possible nexus to Range Resources' burden of proof, the information sought is the anti-thesis of being "crucial" to case.

## **2. The Information Sought by the Subpoenas Can be Obtained by Alternative Means**

30. It is self-evident that the information sought can be obtained from other sources. The Subpoenas themselves *admit the information sought is available from the actual parties involved in the litigation*. For example:

- a. Request No. 1 involves alleged communications exclusively between the Plaintiffs and their agents or counsel regarding the underlying litigation and other actions. The request itself identifies alternative sources.
- b. Request Nos. 3 and 4 relate to information that is obtainable from the publicly accessible docket of the underlying matter.
- c. Requests Nos. 8, 10, 13 and 14 specifically identify parties to the requested communications that are not protected by the Qualified Reporter's Privilege.

31. Similarly, the Topics listed in The PG subpoena specifically identify sources other than The Post-Gazette.

32. It is clear that Range Resources is not interested in other sources, let alone their ability to provide the requested information, and instead seeks to harass and intimidate The Post-Gazette. The Subpoenas are unenforceable pursuant to Qualified Privilege as the requested testimony and documentation is readily available to Range Resources by alternative means.

### **3. Range Resources Has Failed to Demonstrate an Effort to Obtain the Information from Other Sources**

33. Lastly, to overcome the Qualified Privilege, Range Resources must demonstrate an effort to obtain the testimony and documentation sought in the Subpoenas from sources outside of The Post-Gazette.

34. It is clear that Range Resources has made no effort whatsoever to obtain the information from sources other than The Post-Gazette. No discovery, other than that directed to The Post-Gazette, has been sought.

35. Because there has been no attempt by Range Resources to obtain the testimony and documentation sought by the Subpoenas from other sources, the Subpoenas must be quashed pursuant to the Qualified Reporters Privilege.

**C. In Addition to the Shield Law and Qualified Reporter's Privilege, the Subpoenas Must be Quashed as They Were Issued in Bad Faith and Purely to Harass The Post-Gazette**

36. The “subpoena power is not unlimited.” *Com. v. Mejia-Arias*, 734 A.2d 870, 878 (Pa. Super. 1999).

37. The issues presented by The Post-Gazette’s Motion to Unseal are extremely limited and purely relate to Range Resources’ ability to assert privacy and governmental interests that are capable of overcoming the common law and First Amendment rights of access. The Post-Gazette bears no burden to show why it seeks access to the judicial documents as a representative of the public.

38. Contrary to this framework, Range Resources issued four subpoenas to The Post-Gazette seeking documents and testimony that have absolutely nothing to do with the matter at issue - the common law and Constitutional presumptions of access to judicial documents. *See Zdrok, supra.*

39. As examples, Request No. 17 seeks any order, opinion, filing, or transcript relating to any civil, criminal or administrative proceeding that was marked as settled, closed or final at the time The Post-Gazette sought to intervene *from 1950 to the present*. Request No. 17 is so brazen and legally abusive that The Post-Gazette will only respond by stating if Range Resources was proceeding in good faith it could have used its extensive legal resources to search publicly available records for this information.

40. Like Request No. 17, Topics 7 through 9 are so evidently harassing to The Post-Gazette and abusive of the power to subpoena that a response would undeservingly legitimize the topics.

41. Topic No. 7, for reasons that escape understanding, indicates that the designee will be asked to disclose The Post-Gazette’s internal document retention policies. This topic is

manifestly irrelevant to the Motion to Unseal. Further even if The Post-Gazette's retention policies had any possible relevance, they would be protected as confidential proprietary information of which discovery is not permitted under Pa. R. C. P. 4012 (a)(9).

42. Harassment and bad faith also is shown by topic No. 9, which lists "the existence of and the parties to any confidential settlement agreement or release entered by the POST-GAZETTE."

43. There is no other logical explanation for the requested discovery other than a campaign of harassment given that the Subpoenas specifically identify other litigants and sources that would arguably possess the requested information and documents:

- a. Communications exclusively between the Plaintiff and her counsel and not any communication to which The Post-Gazette was a party. The Subpoenas, Request No. 1.
- b. Communications exclusively between governmental agencies. Subpoenas, Request No. 8 and 10.

44. Range Resources' Subpoenas are transparent retaliation for The Post-Gazette filing the Motion to Unseal and were issued with the hope they will have a chilling effect on The Post-Gazette's news-gathering, which they will not.

#### **D. The Post-Gazette is Entitled to Counsel Fees**

45. As evidenced above, Range Resources' Subpoenas are nothing more than an effort to harass The Post-Gazette as they seek a tremendous volume of documents and extensive testimony regarding matters that are wholly privileged and irrelevant to The Post-Gazette's Motion to Unseal.

46. Despite the apparent bad faith and the total lack of foundation for legitimate discovery, The Post-Gazette had no choice but to expend considerable time and resources in preparing the instant Omnibus Motion to have protection from the Subpoenas' harassing and abusive aims.

47. Counsel fees may be awarded as a sanction for “dilatory, obdurate or vexatious conduct during the pendency of a matter.” 42 Pa.C.S.A. § 2503(7).

48. The Subpoenas, a brazen and legally abusive attempt to harass and intimidate The Post-Gazette, define obdurate and vexatious conduct.

49. In accordance with the forgoing, The Post-Gazette requests that it be reimbursed for its counsel fees and expenses for preparing and presenting this Omnibus Motion. Upon granting this request, The Post-Gazette will submit a verified statement of its counsel fees and expenses.

WHEREFORE, the Intervenor, The Pittsburgh Post-Gazette, respectfully requests that this Honorable Court grant the relief requested in this Omnibus Motion and enter the attached order quashing the subpoenas of Range Resources and awarding counsel fees and expenses.

Respectfully submitted,

By:

  
Frederick N. Frank, Esquire  
Attorney for Intervenor

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

STACEY HANEY, individually and as Parent and Natural Guardian of	:	Consolidated at Docket No. 2012-3534
HARLEY HANEY, a minor, and PAIGE HANEY, a minor, and BETH VOYLES and JOHN VOYLES, husband and wife, ASHLEY VOYLES, individually, LOREN KISKADDEN, individually, GRACE KISKADDEN, individually,	:	The Honorable Michael J. Lucas
	:	<b>EMERGENCY PETITION TO INTERVENE AND TO UNSEAL RECORD</b>
Plaintiffs,	:	Filed on behalf of Intervenor:
vs.	:	The Pittsburgh Post-Gazette
RANGE RESOURCES -APPALACHIA, LLC, et al.,	:	
Defendants.	:	Counsel of Record for This Party:
STACEY HANEY, individually and as Parent and Natural Guardian of	:	FREDERICK N. FRANK, Esquire
HARLEY HANEY, a minor, and PAIGE HANEY, a minor, and BETH VOYLES and JOHN VOYLES, husband and wife, ASHLEY VOYLES, individually, LOREN KISKADDEN, individually, GRACE KISKADDEN, individually,	:	Pa. I.D. #10395
Plaintiffs,	:	JOHN C. SCIALABBA, Esquire
vs.	:	Pa. I.D. #324493
SOLMAX INTERNATIONAL, INC.,	:	FRANK, GALE, BAILS, MURCKO & POCRASS, P.C.
Defendant.	:	Firm I.D. No. 892
	:	33 <sup>rd</sup> Floor, Gulf Tower
	:	707 Grant Street
	:	Pittsburgh, PA 15219
	:	(412) 471-5912

EXHIBIT  
No. 1

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

STACEY HANEY, et al.,	:	CIVIL DIVISION
	:	
Plaintiffs,	:	
vs.	:	Case No. 2012-3534
RANGE RESOURCES – APPALACHIA	:	
LLC, et al.,	:	
Defendants.	:	
<hr/>		
STACEY HANEY, et al.,	:	
	:	
Plaintiffs,	:	
vs.	:	
SOLMAX INTERNATIONAL, INC.,	:	
	:	
Defendant.	:	

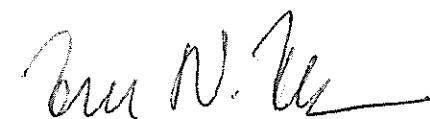
**NOTICE OF PRESENTATION**

TO:

Jonathan M. Kamin, Esquire  
Goldberg, Kamin & Garvin, LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219

Kimberly A. Brown, Esquire  
Jones Day  
500 Grant Street, Suite 4500  
Pittsburgh, PA 15219

KINDLY TAKE NOTICE that the within Emergency Petition to Intervene and to Unseal Record will be presented to The Honorable Michael J. Lucas on the 7<sup>th</sup> day of February, 2019 at 8:45 a.m. in Courtroom No. 5, Washington County Courthouse, 1 South Main Street, Washington, PA 15301.



Frederick N. Frank  
Attorney for Intervenor

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

STACEY HANEY, et al.,	:	CIVIL DIVISION
	:	
Plaintiffs,	:	
vs.	:	Case No. 2012-3534
	:	
RANGE RESOURCES – APPALACHIA	:	
LLC, et al.,	:	
Defendants.	:	
<hr/>		
STACEY HANEY, et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
SOLMAX INTERNATIONAL, INC.,	:	
	:	
Defendant.	:	

**EMERGENCY PETITION TO INTERVENE AND TO UNSEAL RECORD**

The Pittsburgh Post-Gazette (“The Post-Gazette”), by and through its attorneys, Frederick N. Frank, Esquire, John C. Scialabba, Esquire, and Frank, Gale, Bails, Murcko & Pocrass, P.C., presents the within Emergency Petition to Intervene and to Unseal Record and in support thereof avers as follows:

**I. Factual Background and Procedural History**

1. The Post-Gazette is a newspaper of general circulation throughout the Commonwealth and, in particular, throughout southwestern Pennsylvania, with its principal offices located at 358 North Shore Drive, Pittsburgh, Allegheny County, Pennsylvania 15212.

2. The Post-Gazette learned that a civil complaint had been filed in the above-captioned case through various media coverage, including a January 28, 2019 article titled “State conducting criminal investigation of shale gas production.” The article was published by The Post-Gazette and stated that the Plaintiffs had previously filed a civil case against the Defendants in 2012 and that the

Pennsylvania Attorney General sent a letter to counsel for the Plaintiffs and Defendants stating, *inter alia*, that the Pennsylvania Attorney General had “assumed jurisdiction over several criminal investigations involving environmental crimes in Washington County” and “it has come to [the Attorney General’s] attention that one of the potential criminal investigations involves your respective clients.”

3. The docket in this matter reflects that on June 15, 2018, a Motion and Order were “filed under seal” by the Honorable Katherine B. Emery (“Judge Emery”). Again, on September 11, 2018, a Motion and Order were “filed under seal” by Judge Emery. Docket Entries for “Sealed Motions and Sealed Orders” are attached hereto as Exhibit “A”.

4. It is The Post-Gazette’s intention, as described *infra*, to intervene in this matter and unseal the Sealed Motions and Sealed Orders.

5. Upon information and belief, the Post-Gazette has learned that a related proceeding is being heard before this Court on February 7, 2019 at 8:45 a.m.

6. Due to the fact that the Post-Gazette has only recently been made aware of this matter, the Post-Gazette is noticing and presenting this Petition to Intervene and to Unseal Record on an emergency basis.

7. For the reasons set forth below, The Post-Gazette respectfully requests that it be permitted to intervene in the proceedings in order to assert the public’s right of access to the Sealed Motions and Sealed Orders.

## **II. Right to Intervene to Assert the Right of Access**

8. Of significance to this matter is the critical role the press plays in our democracy. In *Mills v. Alabama*, 384 U.S. 214, 218 (1966), the United States Supreme Court noted: “The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs. Thus, the

press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve.”

9. Pennsylvania Courts have continuously recognized this important role the press plays in protecting the public interest in public access and “the legitimacy and importance of the interest of the news media in judicial proceedings.” *Capital Cities Media, Inc. v. Toole*, 483 A.2d 1339, 1344 (Pa. 1984); *See also Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 586 (1980) (reaffirming that “the institutional press is the likely, and fitting, chief beneficiary of a right of access because it serves as the ‘agent’ of interested citizens, and funnels information about trials to a large number of individuals”).

10. As an agent of the public, the press has consistently been found to have standing in matters of public access. *See PG Pub. Co. v. Governor's Office of Admin.*, 120 A.3d 456, 462 (Pa. Cmmw. 2015), aff'd, 135 A.3d 578 (Pa. 2016) (recognizing the “media’s unique role and interest in observing government activity in our democracy” and holding that the press had a sufficient direct interest for standing to challenge alleged obstacles to accessing public records).

11. The Pennsylvania Supreme Court has held the proper manner by which the press may assert the public’s right of access to judicial proceedings is to file a petition to intervene. *Commonwealth v. Long*, 592 Pa. 42, 47, 922 A.2d 892, 895 n.1 (2007).

12. As noted above, access rights of the press, and of the general public, are of equal significance. Accordingly, The Post-Gazette, as a representative of the public, has standing to intervene and assert the public’s right of access to judicial proceedings. *See also United States v. Wecht*, 484 F. 3d 194, 202-03 (3d Cir. 2007).

### **III. Right of Access to the Sealed Motions and Sealed Orders**

13. The Pennsylvania Constitution supports the principle of open judicial proceedings. "All courts shall be open." Pa. Const. Art. I, § 11. Furthermore, case law has supported this principle as well. *See, e.g., Hutchinson by Hutchinson v. Luddy*, 611 A.2d 1280 (Pa. Super. 1992).

14. The tradition of keeping proceedings and records of civil proceedings open to public observation is rooted in common law right, and as stated in *Publicker Industries v. Cohen*, 733 F.2d 1059, 1071 (3<sup>rd</sup> Cir. 1984), "[it is] clear that the public and the press possess a First Amendment and a common law right of access to civil proceedings; indeed there is a presumption that these proceedings will be open."

15. The filing of a petition to intervene in order to open proceedings by the news media, in a civil trial, is an appropriate means of raising assertions of public rights of access. *See Hutchinson by Hutchinson*, 611 A.2d at 1284.

16. In determining whether the record in a civil proceeding should be sealed, the Superior Court has adopted the standards set forth by the Third Circuit in *Publicker Industries*. *See Hutchinson by Hutchinson*, 611 A.2d at 1290, 1291.

17. Under *Publicker Industries*, a trial court must satisfy certain procedural and substantive requirements before it can deny access to civil proceedings. *Publicker Industries*, 733 F.2d at 1071.

18. Procedurally, a trial court, before sealing a record, must afford the representatives of the media objecting to closure a full opportunity to be heard with their counsel present. If it decides to order closure, the trial court then must both articulate the countervailing interest it seeks to protect and make findings specific enough that a reviewing court can determine whether the closure order was properly entered. *Publicker Industries*, 733 F.2d at 1071-72.

19. In *Publicker Industries*, the reviewing court reversed and remanded a trial court order sealing the record because the trial court failed to articulate the reasons explaining the sealing of the

record, stating: “Here, the [trial court’s] conclusion could be predicated on either a valid rationale or an invalid rationale, and we cannot assume that its final conclusions were necessarily based on the valid rationale.” *Id.* at 1073.

#### IV. Range Resources – Appalachia, LLC (“Range Resources”) Has Not Overcome the Common Law and Constitutional Presumption of Openness

20. The Superior Court has stated that there are two methods for analyzing requests for closure of judicial proceedings, each of which begins with a presumption of openness – a common law analysis and a constitutional analysis. *Zdrok v. Zdrok*, 829 A.2d 697, 699 (Pa. Super. 2003).

21. Under the common law approach, the party seeking closure must show that his or her interest in secrecy outweighs the presumption of openness. *Id.*

22. Under the constitutional approach, which is based on the First Amendment of the United States Constitution and Article I, Section 11 of the Pennsylvania Constitution, the party seeking closure must overcome the presumption of openness by showing that closure serves an important governmental interest and there is no less restrictive way to serve that interest. *Id.*

23. In cases where a party is seeking closure and cannot meet the threshold of the common law analysis, it is not necessary for the Court to consider whether the constitutional analysis has been satisfied. *Hallowich v. Range Res. Corp.*, No. 2010-3954, 2013 WL 10254260, at \*3 (Pa. Com. Pl. Mar. 20, 2013)

24. Specifically, in order to justify closure or sealing the judicial record, a party must first overcome the common law presumption of openness. *R.W. v. Hampre*, 626 A.2d 1218, 1220 (Pa. Super. 1993).

**A. Range Resources Fails to Overcome the Common Law Presumption of Openness.**

25. Under the common law analysis, the party seeking to close the record bears the burden of proving that they will suffer a clearly defined and serious injury if the record were not sealed. *Hallowich v. Range Res. Corp.*, No. 2010-3954, 2013 WL 10254260, at \*6 (Pa. Com. Pl. Mar. 20, 2013).

26. Under the common law approach, the party seeking closure must show that his or her interest in secrecy outweighs the presumption of openness. *PA ChildCare LLC v. Flood*, 887 A.2d 309, 311–12 (Pa.Super.2005).

27. In Range Resources' Response in Opposition to Plaintiff Stacey Haney's Motion for Protective Order and Special Relief, the Defendant baldly states that this Court "may not" permit the disclosure of the confidential settlement agreement. The Response provides no authority for this argument. Defendant's Response in Opposition to Plaintiff Stacey Haney's Motion for Protective Order and Special Relief, Page 12.

28. To the contrary, this Court has previously ruled that the Press' and the public's ability to obtain settlement information by the common law right of access to our Courts, does not impair contracting parties' obligations. *Hallowich v. Range Res. Corp.*, No. 2010-3954, 2013 WL 10254260, at \*6 (Pa. Com. Pl. Mar. 20, 2013). Confidentiality runs only between the Plaintiffs and Defendants. *Id.* The unsealing of the record leaves confidentiality obligations wholly intact, because the parties remain just as constrained from speaking of the terms and conditions of the settlement as they were prior to its unsealing. *Id.*

29. Further, Article I of the Pennsylvania Constitution (specifically related to the right to privacy) does not apply to the Defendants, as all of the Defendants in the underlying action are business entities. *Hallowich v. Range Res. Corp.*, No. 2010-3954, 2013 WL 10254260, at \*2 (Pa. Com. Pl. Mar. 20, 2013) (holding that business entities cannot assert privacy rights under Article I of the Pennsylvania Constitution).

30. Range Resources has failed to assert that they will suffer a clearly defined and serious injury if the record were not sealed and thus, as a matter of law, Range Resources cannot overcome the common law presumption of openness.

**B. Range Resources Fails to Overcome the First Amendment Presumption of Openness.**

31. Even if the Court determines that a party has overcome the common law presumption of openness, and a clearly defined and serious injury exists, the movant still must overcome the higher First Amendment burden. *Commonwealth v. Long*, 922 A.2d 892, 897 (Pa. 2007) (“the First Amendment provides a greater right of public access than the common law”); *In re Cendant Corp.*, 260 F.3d 183, 198, n.13 (3d Cir. 2001) (wherein the Third Circuit noted the “higher showing” which a party seeking closure must establish to rebut the presumption of openness under the First Amendment).

32. A party only can overcome this higher presumption of openness by showing that “denial of public access serves an important government interest and there is no less restrictive way to serve that government interest.” *R.W. v. Hampe*, 626 A.2d 1218, 1220 (Pa. Super. 1993).

33. In the instant matter, Range Resources has no governmental interest. To the contrary, this case involves allegations of Range Resources, a publicly traded Texas based corporation, having caused spills and leaks of toxic chemicals that resulted in serious health issues, property damage, and water pollution to land owners in Washington County.

34. In the Defendant’s Response in Opposition to Plaintiff Stacey Haney’s Motion for Protective Order and Special Relief, Range Resources does not devote a single sentence to the First Amendment burden and accordingly, has failed to meet their burden to show how they have overcome the First Amendment right of access.

35. The Post-Gazette therefore requests that their request to intervene be granted and a hearing on The Post-Gazette’s Petition to Unseal Record be scheduled before this Court, with all

parties seeking sealing of the record required to submit an answer no later than 10 days before the scheduled hearing setting forth their basis for seeking sealing of the record.

WHEREFORE, the Intervenor, The Post-Gazette, respectfully requests that this Honorable Court grant the relief requested in this Petition and enter the attached order.

Respectfully submitted,

  
By: \_\_\_\_\_

Frederick N. Frank, Esquire  
Attorney for Intervenor

**CERTIFICATE OF SERVICE**

I, Frederick N. Frank, Esquire, hereby certify that a true and correct copy of the foregoing  
EMERGENCY PETITION TO INTERVENE AND TO UNSEAL RECORD was served upon the  
following, this 4th day of February, 2019 as follows:

**VIA FACSIMILE**

The Honorable Michael J. Lucas  
Washington County Courthouse  
1 South Main Street  
Suite 1005  
Washington, PA 15301

**VIA EMAIL**

Jonathan M. Kamin, Esquire  
Goldberg, Kamin & Garvin, LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219

**VIA EMAIL**

Kimberly A. Brown, Esquire  
Jones Day  
500 Grant Street, Suite 4500  
Pittsburgh, PA 15219



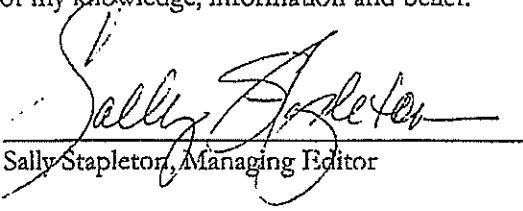
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Frederick N. Frank, Esquire  
Attorney for Intervenor

VERIFICATION

I, SALLY STAPLETON, Managing Editor of The Pittsburgh Post-Gazette, am authorized to make this verification on behalf of The Pittsburgh Post-Gazette, and do make the following statement subject to penalties of 18 Pa.C.S. 4904, relating to unsworn falsifications to authority, and do state that as Managing Editor, the facts set forth in the forgoing Emergency Petition to Intervene and to Unseal Record are true and correct to the best of my knowledge, information and belief.

Date: Feb. 2, 2019

  
\_\_\_\_\_  
Sally Stapleton, Managing Editor

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

STACEY HANEY, et al.,	:	CIVIL DIVISION
	:	
Plaintiffs,	:	
vs.	:	Case No. 2012-3534
	:	
RANGE RESOURCES - APPALACHIA	:	
LLC, et al.,	:	
Defendants.	:	
<hr/>		
STACEY HANEY, et al.,	:	
	:	
Plaintiffs,	:	
vs.	:	
SOLMAX INTERNATIONAL, INC.,	:	
	:	
Defendant.	:	

ORDER OF COURT

NOW, to wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2019, after consideration of The Post-Gazette's Emergency Petition to Intervene and to Unseal Record, it is hereby ORDERED, ADJUDGED and DECREED that The Post-Gazette ("Intervenor") is permitted to intervene and a hearing shall be held on The Post-Gazette's Petition to Unseal Records on the \_\_\_\_\_ day of \_\_\_\_\_, 2019 at \_\_\_\_\_ A.M./P.M. before The Honorable Michael J. Lucas. Ten days prior to said hearing, all parties seeking to seal the record in the above-captioned case shall serve on all other parties, including the Intervenor, and the Court an answer to Intervenor's Petition setting forth the basis in law and fact why the record should be sealed.

BY THE COURT:

\_\_\_\_\_J.

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Washington

Stacey Haney, et al.,

Plaintiffs

v.

: File No. 2017-3534

Range Resources- Appalachia LLC, et al.,

Defendants

SUBPOENA TO ATTEND AND TESTIFY

TO: PG Publishing Co. d/b/a The Pittsburgh Post-Gazette c/o  
Frederick N. Frank, Esq. 707 Grant Street, Suite 3300  
Pittsburgh, PA 15219

1. You are ordered by the court to come to Jones Day 500 Grant Street,  
Suite 4500

(Specify courtroom or other place)

at Pittsburgh, Allegheny County, Pennsylvania, on March 12, 2019  
at 4:00 o'clock, p. M., to testify on behalf of PG Publishing Co.

in the above case, and to remain until excused.

2. And bring with you the following: Please see Exhibits A and B

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

REQUESTED BY A PARTY/ATTORNEY IN COMPLIANCE WITH Pa.R.C.P. No. 234.2(a):

NAME: Kimberly A. Brown, Esq.

ADDRESS: 500 Grant Street Suite 4500  
Pittsburgh, PA 15219

TELEPHONE: 412-391-3937

SUPREME COURT ID # 56200

BY THE COURT:

Joy Schury Ranko (ts)  
Prothonotary Clerk, Civil Division

Sandra D. Bedillion (ts)

JOY SCHURY RANKO, PROTHONOTARY  
My Term Expires First Monday in January, 2020

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with Pa.R.C.P. No. 234.1. If a subpoena for production of documents, records or things is desired, complete paragraph 2.

(Eff. 4/00)

EXHIBIT  
No. 2

IN THE COURT OF COMMON PLEAS OF  
WASHINGTON COUNTY, PENNSYLVANIA

STACEY HANEY, individually and as  
Parent and Natural Guardian of,  
HARLEY HANEY, a minor, and PAIGE  
HANEY, a minor, and BETH VOYLES,  
and JOHN VOYLES, husband and wife,  
ASHLEY VOYLES, individually,  
LOREN KISKADDEN, individually,  
GRACE KISKADDEN, individually,

Plaintiffs,

v.

RANGE RESOURCES – APPALACHIA,  
LLC, et al.,

Defendants.

STACEY HANEY, individually and as  
Parent and Natural Guardian of,  
HARLEY HANEY, a minor, and PAIGE  
HANEY, a minor, and BETH VOYLES,  
and JOHN VOYLES, husband and wife,  
ASHLEY VOYLES, individually,  
LOREN KISKADDEN, individually,  
GRACE KISKADDEN, individually,

Plaintiffs,

v.

SOLMAX INTERNATIONAL, INC.,

Defendant.

CIVIL DIVISION

Consolidated at Docket No. 2012-3534

**DEFENDANT RANGE RESOURCES—  
APPALACHIA, LLC'S NOTICE OF  
DEPOSITION DUCES TECUM OF PG  
PUBLISHING CO. D/B/A THE  
PITTSBURGH POST-GAZETTE**

On Behalf of Defendant  
Range Resources - Appalachia, LLC

Counsel of Record for This Party:

Kimberly A. Brown, Esquire  
PA I.D. #56200  
Kevin C. Meacham, Esquire  
PA I.D. #208125  
JONES DAY  
500 Grant Street, Suite 4500  
Pittsburgh, PA 15219-2514  
Telephone: (412) 391-3939  
Facsimile: (412) 391-7959  
[kabrown@jonesday.com](mailto:kabrown@jonesday.com)  
[kcmeacham@jonesday.com](mailto:kcmeacham@jonesday.com)

**IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA**

**STACEY HANEY, et al.,**

**Plaintiffs,**

**v.**

**RANGE RESOURCES - APPALACHIA,  
LLC, et al.,**

**Defendants.**

**CIVIL DIVISION**

**No. 2012-3534**

**DEFENDANT RANGE  
RESOURCES—APPALACHIA,  
LLC'S NOTICE OF DEPOSITION  
DUCES TECUM OF PG  
PUBLISHING CO. D/B/A THE  
PITTSBURGH POST-GAZETTE**

---

**STACEY HANEY, et al.,**

**Plaintiffs,**

**v.**

**SOLMAX INTERNATIONAL, Inc.,,**

**Defendant.**

**CIVIL DIVISION**

**No. 2012-7402**

**NOTICE OF DEPOSITION DUCES TECUM OF PG PUBLISHING CO. D/B/A THE  
PITTSBURGH POST-GAZETTE**

**TO: PG Publishing Co. d/b/a The Pittsburgh Post-Gazette**

**PLEASE TAKE NOTICE that Defendant, Range Resources – Appalachia, LLC, by their attorneys will, pursuant to Pa.R.C.P. 4007.1(e), take the deposition of the corporate designee for PG Publishing Co. d/b/a The Pittsburgh Post-Gazette (“The Pittsburgh Post-Gazette”) on the topics identified in Exhibit B hereto on March 12, 2019 at 4:00 p.m. at the offices of Jones Day, 500 Grant St., Ste. 4500, Pittsburgh, PA 15219, and continuing thereafter day to day until completed before a court reporter authorized by law to administer oaths. The deposition will be recorded by stenographic means. Under Rule 4007.1(e), The Pittsburgh Post-Gazette is**

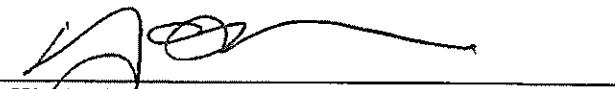
requested to designate an appropriate person or persons to testify concerning those matters set forth in Exhibit B, attached hereto.

**DUCES TECUM**

The deponent shall produce at this deposition the documents identified in Exhibit A hereto.

Dated: February 25, 2019

Respectfully submitted,



---

Kimberly A. Brown  
Pa Bar No. 56200  
JONES DAY  
500 Grant Street, Suite 4500  
Pittsburgh, PA 15219  
Telephone: (412) 391-3939  
Facsimile: (412) 394-7959  
kabrown@jonesday.com

*Counsel for Defendant*  
**RANGE RESOURCES - APPALACHIA, LLC**

**EXHIBIT A TO NOTICE OF DEPOSITION DUCES TECUM OF PG PUBLISHING CO.**  
**D/B/A THE PITTSBURGH POST-GAZETTE**

**DEFINITIONS**

- The "POST-GAZETTE," or "YOU" or "YOUR" shall mean for the purpose of this notice PG Publishing Company d/b/a The Pittsburgh Post-Gazette, and its employees, agents and representatives.
- The "Post-Gazette's Petition" or "Petition" shall mean the document titled "Emergency Petition to Intervene and to Unseal Record" filed in the HANEY-RANGE LITIGATION on February 7, 2019.
- "COMMUNICATION" or "COMMUNICATE" shall mean for the purpose of this notice ANY act or instance whereby messages, facts, opinions, data or ANY other information is transmitted orally, visually, in writing, electronically or by ANY other means or media from one or more persons to one or more other persons and shall include the transmission, the messages, facts, opinions, data or other information transmitted, and the process by which the transmission was effected.
- "DOCUMENT" shall be an all-inclusive term that shall be used in its broadest sense and is to include ANY medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the following, whether printed, typewritten, recorded, filmed or reproduced by ANY mechanical process or written or produced by hand, *and whether an original, master or copy*, and whether or not claimed to be privileged from discovery, namely: **reporter notes**, worksheets, agreements, books, records, letters, accounts, notes, summaries, forecasts, appraisals, surveys, estimates, diaries, desk calendars, reports, COMMUNICATIONS, correspondence, cablegrams, radiograms, facsimiles, printed electronic mail messages, telegrams, telexes, memoranda, summaries, notes and records of telephone conversations, meetings and conferences, notes in reference to personal conversations or interviews, ledgers, invoices, contracts, notices, drafts of ANY DOCUMENT, business records, charts, plans, specifications, schedules, diaries, computer printouts, computer stored data, computer tapes or computer disks, microfilm, microfiche, photographs, slides, negatives, motion pictures, video recordings, tape or other voice recordings and transcriptions thereof, data compilations from which information can be

obtained or translated and ANY other information contained on paper, in writing, in graphical media, in ANY computer readable media, or in ANY other physical form in your actual or constructive possession, custody or control.

- The term “DOCUMENT” shall mean any ESI, data, and metadata, content or communications, including messages, profiles, photographs, graphics, posts, text, timelines, tweets, pages, or any other information from accounts including but not limited to the following: Facebook, Myspace, Twitter, Instagram, LinkedIn, YouTube, Pinterest, Google Plus+, Tumblr, Reddit, Vine, Flickr, AskFM, and Snapchat and mobile applications (“apps”) thereof, including any in which PLAINTIFFS are “tagged,” mentioned, or otherwise identified on the social media of friends and acquaintances. The term “DOCUMENT” OR “DOCUMENTS” includes, without limitation, the original, whether or not the original is in your actual or constructive possession, custody or control, and all file copies and other copies that are not identical to the original no matter how [e.g., containing handwritten notations] or by whom prepared, and all drafts prepared in connection with ANY DOCUMENTS, whether used or not.
- “HANEY-RANGE LITIGATION” shall mean for the purpose of this notice, the civil lawsuits filed in Washington County, Pennsylvania at *Haney, et al. v. Range Resources Appalachia, LLC, et al.*, Case No. 2012-3534 and *Haney, et al. v. Solmax International, Inc.*, Case No. 2012-7402 (consolidated at Case No. 2012-3534).
- “PLAINTIFF” shall mean for the purpose of this notice any of the named plaintiffs in the civil lawsuit filed in Washington County, Pennsylvania at *Haney, et al. v. Range Resources Appalachia, LLC, et al.*, Case No. 2012-3534, including Stacey Haney, Harley Haney, Paige Haney, Beth Voyles, John Voyles, Ashley Voyles, Grace Kiskadden, and Loren Kiskadden.
- “SMITH BUTZ” shall mean for the purpose of this notice the law firm of Smith Butz, LLC, including Attorney John Smith, Attorney Kendra Smith, any and all other attorneys working at or for the law firm of Smith Butz, LLC, all staff and employees of the law firm of Smith Butz, LLC, and any agents and representatives thereof.
- “HANEY ALLEGHENY COUNTY LITIGATION” shall mean for the purpose of this notice, the civil lawsuit filed in Allegheny County, Pennsylvania at *Haney v. Center for Diabetes and Endocrine Health, et al.*, Case No. GD 16-001817.

- “GOLDBERG, KAMIN & GARVIN” shall mean for the purpose of this notice, the law firm of Goldberg, Kamin & Garvin, LLP, including Attorney Jonathan M. Kamin, Attorney David Wolf, Attorney Deborah R. Erbstein, all staff and employees of the law firm of Goldberg, Kamin & Garvin, LLP, and any agents and representatives thereof.
- “DISTRICT ATTORNEY VITDONE” shall mean for the purpose of this notice Eugene A. Vittone II, District Attorney, Washington County, Pennsylvania, and all staff and employees of the Office of the District Attorney of Washington County, Pennsylvania.
- “OFFICE OF ATTORNEY GENERAL” shall mean for the purpose of this notice the Pennsylvania Office of Attorney General, including Attorney General Joshua Shapiro, and all staff and employees of the Pennsylvania Office of Attorney General.
- “JANUARY 28 ARTICLE” shall mean for the purpose of this notice the article titled *State Conducting Criminal Investigation of Shale Gas Production*, David Templeton and Don Hopey, Pittsburgh Post-Gazette, Jan 28, 2019, <https://www.post-gazette.com/news/crime-courts/2019/01/28/pa-attorney-general-josh-shapiro-criminal-investigation-oil-gas-industry-washington-county-environmental-crimes/stories/201901210078>
- A request for information “REFERRING TO” (and/or ANY form thereof), “RELATING TO” (and/or ANY form thereof), “CONCERNING” (and/or ANY form thereof), “REGARDING” (and/or ANY form thereof), or “REFLECTING” (and/or ANY form thereof) a given subject matter shall be construed in the broadest sense and shall include information that, directly or indirectly, constitutes, embodies, comprises, reflects, represents, supports, contradicts, identifies, records, notes, mentions, states, refers to, refutes, reports upon, responds to, describes, discusses, studies, analyzes, evaluates, contains information concerning, or is in ANY way pertinent or relevant to that subject matter. *As indicated, the term necessarily includes information that is in opposition to as well as in support of YOUR position(s) and claim(s) in this action.*

#### **REQUESTED DOCUMENTS**

1. Any and all DOCUMENTS REFLECTING, CONCERNING, OR REGARDING COMMUNICATIONS with any PLAINTIFF, their agent, attorney, or representative, including SMITH BUTZ and/or GOLDBERG, KAMIN & GARVIN, REGARDING the

HANEY-RANGE LITIGATION, the HANEY ALLEGHENY COUNTY  
LITIGATION, *Kiskadden v. Department of Environmental Protection*, Environmental  
Hearing Board Docket No. 2011-149-R, Commonwealth Court Docket No. 1167 CD  
2015 and/or *Voyles v. Pennsylvania Department of Environmental Protection*,  
Commonwealth Court Docket No. 253 M.D. 2011, from January 1, 2012 to the present.

2. Any and all DOCUMENTS RELATING TO the allegations contained in Paragraph 2 of the Post-Gazette's Petition including the statement that "The Post-Gazette learned that a civil complaint had been filed in the above-captioned case through various media coverage, including a January 28, 2019 article titled 'State conducting criminal investigation of shale gas production.'"
3. Any and all DOCUMENTS RELATING TO the allegations contained in Paragraph 3 of the Post-Gazette's Petition, including the statement that "on June 15, 2018, a Motion and Order were 'filed under seal' by the Honorable Katherine B. Emery ("Judge Emery"). Again, on September 11, 2018, a Motion and Order were 'filed under seal' by Judge Emery."
4. Any and all DOCUMENTS RELATING TO the allegations contained in Paragraph 5 of the Post-Gazette's Petition, specifically the statement that "Upon information and belief, the Post-Gazette has learned that a related proceeding is being heard before this Court on February 7, 2019 at 8:45 a.m."
5. Any and all DOCUMENTS RELATING TO the allegations contained in Paragraph 6 of the Post-Gazette's Petition, including the statement that "the Post-Gazette has only recently been made aware of this matter."

6. Any and all DOCUMENTS RELATING TO the allegations contained in Paragraph 33 of the Post-Gazette's Petition, including the statement that "Range Resources has no governmental interest."
7. Any and all DOCUMENTS referenced in the JANUARY 28 ARTICLE, cited in the Post-Gazette's Petition, ¶ 2, including but not limited to:
  - (a) The "August 16, 2018 Letter to attorneys in a civil case" reportedly signed by Deputy Attorney General Courtney Butterfield, and "obtained recently by the Pittsburgh Post-Gazette";
  - (b) The September 8, 2018 letter sent from a "resident" to DISTRICT ATTORNEY VITDONE, "asking him to investigate the 'many individuals and companies involved in his situation'";
  - (c) The September 13, 2018 letter from DISTRICT ATTORNEY VITDONE to the "resident", reportedly "noting limited jurisdiction" and that DISTRICT ATTORNEY VITDONE was "forwarding a copy of your letter to Acting Chief Deputy Attorney General Rebecca Franz";
8. COMMUNICATIONS between DISTRICT ATTORNEY VITDONE and the OFFICE OF ATTORNEY GENERAL, REGARDING the matters that are the subject of the JANUARY 28 ARTICLE.
9. Any DOCUMENTS RELATING TO the "arrangement" between DISTRICT ATTORNEY VITDONE and the OFFICE OF ATTORNEY GENERAL, REGARDING the matters that are the subject of the JANUARY 28 ARTICLE.
10. Any COMMUNICATIONS between Washington County residents and the OFFICE OF ATTORNEY GENERAL, REGARDING the matters that are the subject of the JANUARY 28 ARTICLE.
11. Any DOCUMENTS RELATED TO the May 2017 meeting between the OFFICE OF ATTORNEY GENERAL wherein "17 people from as many as seven counties aired

complaints about the shale gas industry," REGARDING the matters that are the subject of the JANUARY 28 ARTICLE.

12. Any DOCUMENTS RELATED TO the meeting "Late in May 2017" wherein "[Attorney General] Shapiro and AG investigators met in Pittsburgh with representatives from environmental advocacy groups," REGARDING the matters that are the subject of the JANUARY 28 ARTICLE.
13. Any COMMUNICATIONS between YOU and June Chappel, REGARDING the matters that are the subject of the JANUARY 28 ARTICLE.
14. Any COMMUNICATIONS between YOU and any of the "[t]hree others [who] have met with investigators and say they are willing to testify," REGARDING the matters that are the subject of the JANUARY 28 ARTICLE.
15. Any DOCUMENTS RELATED TO or REFLECTING that "the AG's letter was introduced as an exhibit during an August court hearing" in the HANEY-RANGE LITIGATION as reported in the JANUARY 28 ARTICLE.
16. Any DOCUMENTS (the definition of which expressly includes "reporter notes") REGARDING the HANEY-RANGE LITIGATION, the HANEY ALLEGHENY COUNTY LITIGATION, and/or efforts by Stacey Haney, GOLDBERG, KAMIN & GARVIN, and/or SMITH BUTZ to unseal court records and/or publicly or otherwise further disclose the confidential settlement agreement reached in the HANEY-RANGE LITIGATION.
17. Any order, opinion, filing, or transcript RELATING TO any civil, criminal or administrative proceeding that was marked on that proceeding's docket as settled, closed, or final judgment entered at the time in which PG Publishing Company d/b/a The

Pittsburgh Post-Gazette sought to intervene from 1950 to the present, excluding the present matter.

**EXHIBIT B TO NOTICE OF DEPOSITION DUCES TECUM TO PG PUBLISHING CO.**  
**D/B/A PITTSBURGH POST-GAZETTE**

Per Rule 4007.1(e), Range Resources – Appalachia, LLC will depose the corporate designee of PG Publishing Company d/b/a The Pittsburgh Post-Gazette ("the Post-Gazette") on the topics identified below. The Post-Gazette has a duty to designate "one or more officers, directors, or management agents, or other persons who consent to testify on its behalf" as to the following matters:

**DEFINITIONS**

The definitions of terms as described in Exhibit A hereto shall apply to the below Topics.

**TOPICS**

1. The factual basis of the allegations contained in the Pittsburgh Post-Gazette's Emergency Petition to Intervene and To Unseal Record, filed on February 7, 2019; including, but not limited to, the following allegations:
  - (a) Paragraph 2 of the Post-Gazette's Petition, stating, in part, that "The Post-Gazette learned that a civil complaint had been filed in the above-captioned case through various media coverage, including a January 28, 2019 article titled 'State conducting criminal investigation of shale gas production.'"
  - (b) Paragraph 3 of the Post-Gazette's Petition, stating that "on June 15, 2018, a Motion and Order were 'filed under seal' by the Honorable Katherine B. Emery ("Judge Emery"). Again, on September 11, 2018, a Motion and Order were 'filed under seal' by Judge Emery."
  - (c) Paragraph 5 of the Post-Gazette's Petition, stating that "Upon information and belief, the Post-Gazette has learned that a related proceeding is being heard before this Court on February 7, 2019 at 8:45 a.m."
  - (d) Paragraph 6 of The Post-Gazette's Petition, stating that "the Post-Gazette has only recently been made aware of this matter."
  - (e) Paragraph 33 of the Post-Gazette's Petition, stating that "Range Resources has no governmental interest," and "this case involves allegations of

Range Resources, a publicly traded Texas based corporation, having caused spills and leaks of toxic chemicals that resulted in serious health issues, property damage, and water pollution to land owners in Washington County.”

2. The POST-GAZETTE’S knowledge of the facts reported the JANUARY 28 ARTICLE, as referenced in the Post-Gazette’s Petition, ¶ 2.
3. The POST-GAZETTE’S knowledge of the following DOCUMENTS or COMMUNICATIONS referenced in the JANUARY 28 ARTICLE:
  - (a) The “August 16, 2018 Letter to Attorneys in a Civil Case” signed by Deputy Attorney General Courtney Butterfield, and “obtained recently by the Pittsburgh Post-Gazette”;
  - (b) The September 8, 2018 letter sent from a “resident” to Washington County District Attorney Vittone (“DISTRICT ATTORNEY VITTONE”), “asking him to investigate the ‘many individuals and companies involved in his situation’”;
  - (c) The September 13, 2018 letter from DISTRICT ATTORNEY VITTONE to the “resident”, among other things, “noting limited jurisdiction” and that DISTRICT ATTORNEY VITTONE was “forwarding a copy of your letter to Acting Chief Deputy Attorney General Rebecca Franz”;
  - (d) COMMUNICATIONS between DISTRICT ATTORNEY VITTONE and the OFFICE OF ATTORNEY GENERAL;
  - (e) Any DOCUMENTS RELATED TO the “arrangement” between DISTRICT ATTORNEY VITTONE and the OFFICE OF ATTORNEY GENERAL;
  - (f) Any COMMUNICATION between Washington County residents and the OFFICE OF ATTORNEY GENERAL, as referenced in this article;
  - (g) Any DOCUMENTS RELATED TO the May 2017 meeting between the OFFICE OF ATTORNEY GENERAL wherein “17 people from as many as seven counties aired complaints about the shale gas industry”
  - (h) Any DOCUMENTS RELATED TO the meeting “Late in May 2017” wherein “[Attorney General] Shapiro and AG investigators met in Pittsburgh with representatives from environmental advocacy groups”

- (i) Any COMMUNICATIONS between YOU and June Chappel, REGARDING the matters that are the subject of the JANUARY 28 ARTICLE;
- (j) Any COMMUNICATIONS between YOU and “[t]hree others [persons who] have met with investigators and say they are willing to testify,” REGARDING the matters that are the subject of the JANUARY 28 ARTICLE;
- (k) Any DOCUMENTS RELATED TO or REFLECTING that “the AG’s letter was introduced as an exhibit during an August court hearing” in the HANEY-RANGE LITIGATION as reported in the JANUARY 28 ARTICLE.

4. The date and manner of the POST-GAZETTE’S receipt of the DOCUMENTS listed in Topic No. 3, *supra*.

5. The POST-GAZETTE’S knowledge of the facts contained in DOCUMENTS or COMMUNICATIONS listed in Topic No. 3, *supra*.

6. COMMUNICATIONS between the POST-GAZETTE, and any of the named PLAINTIFFS or their attorneys or representatives, including but not limited to SMITH BUTZ and/or GOLDBERG, KAMIN & GARVIN, RELATING TO any of the following matters:

- (a) the HANEY-RANGE LITIGATION;
- (b) the HANEY ALLEGHENY COUNTY LITIGATION
- (c) *Kiskadden v. Department of Environmental Protection*, Environmental Hearing Board Docket No. 2011-149-R; Commonwealth Court Docket No. 1167 CD 2015;
- (d) *Voyles v. Pennsylvania Department of Environmental Protection*, Commonwealth Court Docket No. 253 M.D. 2011; and/or
- (e) the matters reported in *State Conducting Criminal Investigation of Shale Gas Production*, Don Hooley and David Templeton, Pittsburgh Post-Gazette, Jan 28, 2019, <https://www.post-gazette.com/news/crime-courts/2019/01/28/pa-attorney-general-josh-shapiro-criminal->

[investigation-oil-gas-industry-washington-county-environmental-crimes/stories/201901210078](#), as referenced in the Post-Gazette's Petition, ¶ 2.

7. The POST-GAZETTE'S reporting and editorial oversight practice and procedures including but not limited to document retention policies.
8. The POST-GAZETTE'S efforts to collect DOCUMENTS and respond to subpoenas or discovery requests RELATED TO the Post Gazette's Petition.
9. The existence of and the parties to any confidential settlement agreement or release entered by the POST-GAZETTE.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Defendant Range Resources—Appalachia, LLC's Notice of Deposition Duces Tecum of The Pittsburgh Post-Gazette has been served via e-mail, this 25th day of February, 2019, to the following:

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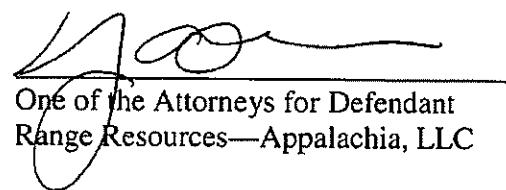
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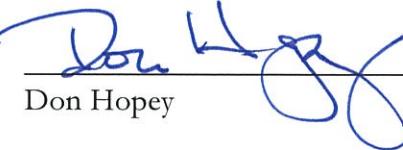


One of the Attorneys for Defendant  
Range Resources—Appalachia, LLC

**VERIFICATION**

I, DON HOPEY, of The Pittsburgh Post-Gazette, am authorized to make this verification on behalf of The Pittsburgh Post-Gazette, and do make the following statement subject to penalties of 18 Pa.C.S. 4904, relating to unsworn falsifications to authority, and do state that the facts set forth in the forgoing Omnibus Motion to Quash Subpoenas, for Protective Order and Award of Counsel Fees are true and correct to the best of my knowledge, information and belief.

Date: 3/4/2019

  
\_\_\_\_\_  
Don Hopey

**CERTIFICATE OF SERVICE**

I, Frederick N. Frank, Esquire, hereby certify that a true and correct copy of the foregoing Omnibus Motion to Quash Subpoenas, for Protective Order and Award of Counsel Fees was served upon the following, via email, this 4th day of March, 2019:

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*Counsel for Plaintiff Stacey  
Haney*



---

Frederick N. Frank, Esquire  
Attorney for Intervenor

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

STACEY HANEY, et al.,	:	CIVIL DIVISION
	:	
Plaintiffs,	:	
vs.	:	Case No. 2012-3534
	:	
RANGE RESOURCES – APPALACHIA	:	
LLC, et al.,	:	
Defendants.	:	
STACEY HANEY, et al.,	:	
	:	
Plaintiffs,	:	
vs.	:	
SOLMAX INTERNATIONAL, INC.,	:	
	:	
Defendant.	:	

**ORDER OF COURT**

NOW, to wit, this \_\_\_\_\_ day of March, 2019, after consideration of The Post-Gazette's Omnibus Motion to Quash Subpoenas, for Protective Order and Award of Counsel Fees ("Omnibus Motion"), it is hereby ORDERED, ADJUDGED and DECREED that:

1. The following subpoenas and notices of deposition issued by Range Resources- Appalachia, LLC ("Range Resources") are quashed:
  - a. Subpoena to Attend and Testify and Notice of Deposition  
*duces tecum* of PG Publishing Co. D/B/A The Pittsburgh Post-Gazette;
  - b. Subpoena to Attend and Testify and Notice of Deposition  
*duces tecum* of Sally Stapleton;
  - c. Subpoena to Attend and Testify and Notice of Deposition  
*duces tecum* of David Templeton; and

d. Subpoena to Attend and Testify and Notice of Deposition

*duces tecum* of Don Hopey. (collectively "the Subpoenas")

2. This Court finds that Range Resources serving of the Subpoenas constitutes obdurate and vexatious conduct as defined in 42 Pa. C. S. A. § 2503(7). Therefore, The Pittsburgh Post-Gazette is awarded all of its counsel fees and expenses for the preparation and presentation of the instant Omnibus Motion. The Pittsburgh Post-Gazette shall file a verified statement of its counsel fees and expenses and Range Resource shall pay the amount of counsel fees and expenses set forth on the verified statement within ten days of the filing of the verified statement.

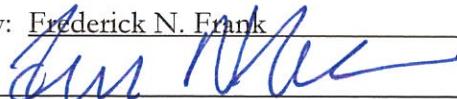
BY THE COURT:

\_\_\_\_\_, J.

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Frederick N. Frank

Signature: 

Name: Frederick N. Frank

Attorney I.D. No. 10395